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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Nicolas Tchikovani

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMC**CV 10****4459**

Case No.:

Nicolas Tchikovani,

Plaintiff,

vs.

Zwicker & Associates, P.C.; and
DOES 1-10, inclusive,

Defendants.

COMPLAINT FOR DAMAGES
1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRATICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

FILE BY FAX

1 For this Complaint, the Plaintiff, Nicolas Tchikovani, by undersigned counsel,
2 states as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

11 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
12 Defendants transact business here and a substantial portion of the acts giving rise to
13 this action occurred here.
14

15 **PARTIES**

16 4. The Plaintiff, Nicolas Tchikovani (hereafter "Plaintiff"), is an adult
17 individual residing in Woodside, California, and is a "consumer" as the term is
18 defined by 15 U.S.C. § 1692a(3).
19

20 5. Defendant, Zwicker & Associates, P.C. ("Zwicker"), is a Massachusetts
21 business entity with an address of 80 Minuteman Road, Andover, Massachusetts
22 01810, operating as a collection agency, and is a "debt collector" as the term is
23 defined by 15 U.S.C. § 1692a(6).
24

25 6. Does 1-10 (the "Collectors") are individual collectors employed by
26 Zwicker and whose identities are currently unknown to the Plaintiff. One or more of
27
28

1 the Collectors may be joined as parties once their identities are disclosed through
2 discovery.

3
4 7. Zwicker at all times acted by and through one or more of the Collectors.

5
6 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

7 **A. The Debt**

8
9 8. The Plaintiff incurred a financial obligation in the approximate amount of
10 \$22,000.00 (the "Debt") to American Express (the "Creditor").

11 9. The Debt arose from services provided by the Creditor which were
12 primarily for family, personal or household purposes and which meets the definition
13 of a "debt" under 15 U.S.C. § 1692a(5).

14 10. The Debt was purchased, assigned or transferred to Zwicker for
15 collection, or Zwicker was employed by the Creditor to collect the Debt.
16

17 11. The Defendants attempted to collect the Debt and, as such, engaged in
18 "communications" as defined in 15 U.S.C. § 1692a(2).
19

20
21 **B. Zwicker Engages in Harassment and Abusive Tactics**

22
23 12. Zwicker called the Plaintiff numerous times per day in an attempt to
24 collect the Debt with the intent to harass.

25 13. Zwicker was rude and abusive when speaking to the Plaintiff.
26
27
28

1 14. Zwicker threatened to file legal action against the Plaintiff if the Debt
2 was not immediately paid. To date, no such action has been filed.
3

4 **C. Plaintiff Suffered Actual Damages**
5

6 15. The Plaintiff has suffered and continues to suffer actual damages as a
7 result of the Defendants' unlawful conduct.
8

9 16. As a direct consequence of the Defendants' acts, practices and conduct,
10 the Plaintiff suffered and continues to suffer from humiliation, anger, anxiety,
11 emotional distress, fear, frustration and embarrassment.
12

13 17. The Defendants' conduct was so outrageous in character, and so extreme
14 in degree, as to go beyond all possible bounds of decency, and to be regarded as
15 atrocious, and utterly intolerable in a civilized community.
16

17 **COUNT I**
18 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
19

20 **15 U.S.C. § 1692, et seq.**

21 18. The Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.
23

24 19. The Defendants used profane and abusive language when speaking with
25 the consumer, in violation of 15 U.S.C. § 1692d(2).
26
27
28

1 20. The Defendants caused a phone to ring repeatedly and engaged the
2 Plaintiff in telephone conversations, with the intent to annoy and harass, in violation
3 of 15 U.S.C. § 1692d(5).
4

5 21. The Defendants threatened to take legal action, without actually
6 intending to do so, in violation of 15 U.S.C. § 1692e(5).
7

8 22. The Defendants employed false and deceptive means to collect a debt, in
9 violation of 15 U.S.C. § 1692e(10).
10

11 23. The foregoing acts and omissions of the Defendants constitute numerous
12 and multiple violations of the FDCPA, including every one of the above-cited
13 provisions.
14

15 24. The Plaintiff is entitled to damages as a result of the Defendants'
16 violations.
17

18 COUNT II

19 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION** 20 **PRACTICES ACT, Cal. Civ. Code § 1788 et seq.**

21 25. The Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.
23

24 26. The Rosenthal Fair Debt Collection Practices Act, California Civil Code
25 section 1788 et seq. ("Rosenthal Act") prohibits unfair and deceptive acts and
26 practices in the collection of consumer debts.
27
28

1 27. Zwicker, in the regular course of business, engages in debt collection and
2 is a "debt collector" as defined by Cal. Civ. Code § 1788.2(c).

3
4 28. The Defendants used obscene and profane language when speaking with
5 the Plaintiff, in violation of Cal. Civ. Code § 1788.11(a).

6
7 29. The Defendants caused a telephone to ring repeatedly and engaged the
8 Plaintiff in continuous conversations with an intent to annoy the Plaintiff, in violation
9 of Cal. Civ. Code § 1788.11(d).

10
11 30. The Defendants communicated with the Plaintiff with such frequency as
12 to be considered harassment, in violation of Cal. Civ. Code § 1788.11(e).

13 31. The Defendants failed to comply with the provisions of 15 U.S.C.
14 § 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.13(e).

15
16 32. The Defendants falsely represented that a legal proceeding had been or
17 was about to be instituted unless the debt was paid immediately, in violation of Cal.
18 Civ. Code § 1788.13(j).

19
20 33. The Defendants did not comply with the provisions of Title 15, Section
21 1692 of the United States Code, in violation of Cal. Civ. Code § 1788.17.

22
23 34. The Plaintiff is entitled to damages as a result of the Defendants'
24 violations.

25
26 **PRAYER FOR RELIEF**

27 WHEREFORE, the Plaintiff prays that judgment be entered against the
28 Defendants:

- 1 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the
- 2 Defendants;
- 3
- 4 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)
- 5 against the Defendants;
- 6
- 7 C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.
- 8 § 1692k(a)(3) against the Defendants;
- 9
- 10 D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- 11
- 12 E. Statutory damages of \$1,000.00 per violation for knowingly and
- 13 willfully committing violations pursuant to Cal. Civ. Code
- 14 § 1788.30(b);
- 15
- 16 F. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
- 17
- 18 G. Actual damages from the Defendants for the all damages including
- 19 emotional distress suffered as a result of the intentional, reckless, and/or
- 20 negligent FDCPA violations and intentional, reckless, and/or negligent
- 21 invasions of privacy in an amount to be determined at trial for the
- 22 Plaintiff;
- 23
- 24 H. Punitive damages; and
- 25
- 26 I. Such other and further relief as may be just and proper.
- 27
- 28

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: October 1, 2010

LARA SHAPIRO

By: /s/ Lara R. Shapiro

Lara R. Shapiro

Attorney for Plaintiff

Nicolas Tchikovani